IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.7494 of 1991
with
SPECIAL CIVIL APPLICATION No.5370 of 1991
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For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2 : Yes
3 to 5 : No

SAURASHTRA PAINTS LTD
Versus
MUNVARALLI KASAMALLI BUKHARI

Appearance:
1. Special Civil Application No. 7494 of 1991
Shri Y.H. Vyas for Petitioner
MR SK BUKHARI for Respondent No. 1

2. Special Civil Application No 5370 of 1991
MR SK BUKHARI for Petitioner
Shri Y.H. Vyas for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 19/11/97

COMMON ORAL JUDGEMENT :

Both these Special Civil Applications arise from one and the same award given by the Labour Court, Ahmedabad in Reference (LCR) No.1619 of 1982, which are taken up for hearing together and are being disposed of by this common judgment.

2. The Labour Court has passed the award awarding 50 per cent of back wages to the workman from 11.6.1982. However, the Labour Court declined the prayer of the workman for reinstatement with full back wages with continuity of service. The workman challenged the award to the extent the Labour Court declines grant of reinstatement with full back wages and continuity of service. The management has challenged that part of the award where the Labour Court awarded 50 per cent of back wages to the workman from 11.6.1982.

3. Learned counsel for the management, Shri Y.H. Vyas contended that the award of the Labour Court is wholly perverse. The Labour Court has recorded finding of fact that the workman has gone on illegal strike and failed to resume duties though he was given notice and it was taken to be misconduct. But still 50 per cent of back wages were ordered to be given, which is a relief against the employer. On the other hand, learned counsel for the workman contended that the order of the Labour Court is perfectly justified as the workman has come up with the case before the Labour Court that he was not knowing even about the strike on 6 & 7th of June 1982 as he was on medical leave during that period. In support of his sickness he produced xerox copy of medical certificate.

4. I have given my thoughtful consideration to the arguments advanced by the counsel for the parties. It is not disputed that the doctor who issued the certificate aforesaid was not examined by the workman. In view of this fact the Labour Court has not committed any error in not placing reliance on the certificate produced by the workman.

5. Yet another fact noticed by the Labour Court is that the workman was on leave from 1.6.1982 to 5.6.1982. In such a case, where the workman really would have been sick he would have submitted application for extension of leave. Admittedly, he has not submitted any application for extension of leave. The management has given notice to the petitioner on 8.6.1982 to join duty. Still he has not responded to the notice. Much emphasis is laid by the counsel for the workman that the management insisted the workman that he should file undertaking in terms of

exhibit 23, which action of the management is wholly unjustified. In support of this contention reliance has been placed by the counsel for the workman on the decision of this Court in case of Swastik Textiles Engineers Pvt. Ltd. vs. Rajensingh Santsingh & others, 25 (1) GLR 470. This judgment has been considered by the Labour Court and the Labour Court has not committed any error in holding that the facts of that case are distinguishable with the facts of the present case. The Labour Court has recorded finding of fact which reads as under :

> "The above facts very clearly show that the workman had gone on illegal strike and has failed to resume duties though he was given a notice. He also declined to sign an undertaking of ex.23. The act of going on illegal strike amounts to misconduct and so if the undertaking of ex.23 is asked from the workman, then it is not an illegality and the company is perfectly justified in asking for such an undertaking. There is absolutely no force in the say of the workman that he was stopped by the company to come on the duty. The company has offered even at the time of filing this written statement as well as at the time of giving evidence that they are ready to keep the workman in work provided he executes a writing of ex.23. So, there is an offer to take him on work on a condition, but the workman has not accepted the said offer by refusing to sign undertaking. So it cannot be said that the workman is stopped by the company by an oral order from coming on the work. Shri Parmar has contended that the services of the workman have been terminated by the oral order on 11.6.1982 and therefore, it amounts to punishment and hence he must be reinstated. The offer of the first party to take the workman on work on a condition of executing ex.23 negatives the contention of Shri Parmar that the services of the workman have been terminated on account of taking a part in the strike and so it amounts to punishment. The workman is, therefore, not entitled to reinstatement as prayed by him."

6. Once the Labour Court has found it to be a case of serious misconduct of remaining absent without justification and to participate in illegal strike and it was not found to be the case where workman should be given benefit of reinstatement and full back wages, I fail to see any justification in the order of the Labour

Court to award 50 per cent of the back wages from 11.6.1982 to the workman. Reasons given by the Labour to award 50 % of back wages as contained in para 11 of the award are extraneous and irrelevant. The Labour Court has not appreciated the facts that the management has offered the workman to join duty and the Labour Court also found as a fact that during pendency of the Reference also the company has offered to take the workman in service provided the workman executed the writing in terms of exhibit 23, which the workman has not accepted. It has further held that the workman was not stopped by company by an oral order from coming on the work. Labour Court further has not accepted the case of the workman that his services were terminated by the management. After recording these finding of facts by resorting to provisions of sec.11A of the Industrial Disputes Act, no relief whatsoever could have been granted to the workman. The workman is responsible for all the creation and sympathy shown by the Labour Court to the workman in the present case is wholly unwarranted and unjustified. Provisions of sec.11A would attract where there is termination or removal from service by the employer, which is not the case here.

7. Taking all the facts of the case into consideration, the award of the Labour Court cannot be allowed to stand. In the result, the Special Civil Application No.7494 of 1991 is allowed and the impugned award of the Labour Court is quashed and set aside.

8. In view of the acceptance of the Special Civil Application No.7494 of 1991, Special Civil Application No.5370 of 1991 filed by the workman does not survive and the same is dismissed. Rule is made absolute in Special Civil Application No.7494 of 1991. Rule is discharged in Special Civil Application No.5370 of 1991. No order as to costs.

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